

Self Regulation of the Legal Profession

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- ❖ Self regulation of attorneys in the legal profession is governed by the ABA and Montana Model Rules of Professional Conduct; namely rules 8.1 and 8.3. When following the ABA rules if an attorney fails to follow one of the rules that information can be used as evidence in a malpractice case.
- The MT rule differs from the ABA where the failure of following these rules cannot be used as evidence in a civil action (much debate occurred when this decision was made).
- Many judges often allow use of violation of these rules for what they are worth, through the introduction of expert testimony; this can be disadvantageous in the defense of a matter.

ABA Model Rules of Professional Conduct

Rule 8.1 Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact; or
- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6 (confidentiality of information).

Rule 8.3 Reporting Professional Misconduct

- (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.
- (b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.
- (c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

MT Rules of Professional Conduct

Rule 8.1 Bar Admission and Disciplinary Matters

An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

- (a) knowingly make a false statement of material fact; or
- (b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6 (confidentiality of information).

Rule 8.3 Reporting Professional Misconduct

- (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.
- (b) A lawyer who knows that a judge has committed a violation of applicable code of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.
- (c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while participating in an approved lawyers assistance program.

- ❖ There are also differences in these rules throughout the 9th Circuit.

- ❖ The Courts have discussed these differences in a number of Montana cases, notably in *Schuff v. A.T. Klemens & Sons*, 303 Mont. 274, 16 P.3d 1002, 2000 MT 357. The Court here stated that although one of the Rules of Professional Conduct was breached (a law firm had represented both the Π and one of the Δs) this did not give rise to a law suit against the firm; and that a suit could only be brought if the Π demonstrates that the attorney failed in his legal duty to his client.

- ❖ The 9th Circuit has also discussed these rules of professional conduct.

- ❖ The matter of whether an attorney should inform the appropriate authority for every violation of the Rules of Professional Conduct has given rise to a vast number of ideas on the subject varying from professionals who think all violations, no matter the severity, should be disclosed to professionals who think that only serious misconduct on the part of an attorney should be disclosed.

- This difference in when disclosure is necessary has created an ethical paradox which exists now in most jurisdictions.

- A number of articles have discussed these Rules of Professional Conduct and the ethical dilemmas that arise from these rules for lawyers and the legal community.